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2024:KER:87983

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

FRIDAY, THE 22ND DAY OF NOVEMBER 2024 / 1ST AGRAHAYANA, 1946

WP(C) NO. 41623 OF 2024

PETITIONER:

[redacted]
AGED 24 YEARS, D/O [redacted]
RESIDING AT [redacted]
PUNALUR, KOLLAM, PIN – 691 333.

BY ADVS.
RAGHUL SUDHEESH
ELIZABETH MATHEW
AMBILY T. VENU
KRISHNAVENI M.
ANUGRAHA P.
AVANI P.S.

RESPONDENTS:

1 STATE OF KERALA
REPRESENTED BY ITS SECRETARY,
DEPARTMENT OF REGISTRATION GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM, PIN – 695 001.

2 SUB REGISTRAR,
PUNALUR SUB REGISTRAR OFFICE, PUNALUR P.O.,
KOLLAM, PIN – 691 305.

3 INSPECTOR GENERAL
DEPARTMENT OF REGISTRATION GOVERNMENT OF KERALA
VANCHIYOOR P.O., THIRUVANANTHAPURAM,
PIN – 695 035.

BY ADV. SUNIL KURIAKOSE (GP)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 22.11.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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JUDGMENT

This writ petition has been filed seeking the following reliefs:

I. *"Issue a Writ of Mandamus or any other appropriate Writ, Order or Direction to the second Respondent to accept Ext.P1 application;*

II. *Issue a Writ of Mandamus or any other appropriate Writ, Order or Direction to the first Respondent to declare that Government Pleaders are Gazetted Officers and hence eligible to accept documents;*

AND

III. *To pass such other reliefs that this Hon'ble Court may think fit in the interest of justice, equity and good conscience".*

2. The brief facts of the case are as follows:

The petitioner is an Indian citizen, permanently residing at the address shown in the cause title. According to her, she intends to get married to one [redacted], a citizen of the United States of America, and therefore

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submitted an application before the 2nd respondent for registration of the marriage under the Special Marriage Act, 1954. A copy of the notice of the intended marriage is on record as Ext.P1. According to the petitioner, the 2nd respondent is taking the view that the document submitted by the petitioner and her fiancé, which was attested by a Government Pleader of this Court, cannot be accepted, as the Government Pleader is not a Gazetted Officer. Ext.P2 communication was also issued by the 2nd respondent to the fiancé of the petitioner stating that as per the instructions contained in G.O.(P) 4/2018/Law dated:12/04/2018, an application attested by a Gazetted Officer alone can be accepted, and since the 2nd respondent is not sure as to whether the Government Pleader is a Gazetted Officer, a clarification has been sought regarding the matter from the Inspector General of Registration. This was followed by Ext.P3 communication issued to the petitioner, intimating the petitioner that the application under the Special Marriage Act, 1954, stands rejected, as the Inspector General of Registration has clarified that the Government

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Pleaders do not fall within the category of Gazetted Officers. A copy of the communication of the Inspector General of Registration was also attached in Ext.P3 communication issued by the 2nd respondent.

3. The learned counsel appearing for the petitioner would submit that the petitioner will be put to serious prejudice if the petitioner and her fiancé are required to submit a fresh application, as a minimum notice period of 30 days is required for registration of the marriage under the Special Marriage Act, 1954. It is submitted that the fiancé of the petitioner has to return to the United States of America shortly, and if the marriage of the petitioner is not registered under the Special Marriage Act, 1954, immediately, the petitioner will be put to great difficulty.

4. The learned Government Pleader submits that the categories of officers who are Gazetted Officers are fixed in terms of a notification issued by the Government. It is submitted that the Government Pleaders are appointed through a Gazette Notification and therefore, for all intends and purposes, a Government Pleader is also a Gazetted

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Officer. It is submitted that in the list of officers, who can attest documents, issued for the guidance of Akshaya Cetres, the District Law Officer is also treated as a Gazetted officer.

5. Having heard the learned counsel for the petitioner and the learned Government Pleader and having regard to the peculiar facts and circumstances of this case, I am of the opinion that this writ petition can be disposed of directing the 2nd respondent to consider Ext.P1 application as valid for all purposes and to proceed to register the marriage of the petitioner in accordance with the law and in compliance with all other formalities without insisting on the filing of a fresh application. For the purposes of the record, the petitioner and her fiancé shall file a physical copy of Ext.P1 application duly attested by a Gazetted Officer who is already notified in terms of the notification issued by the Government of Kerala in this regard and produce the same before the 2nd respondent. In the light of the controversy that has arisen in this case, I also deem it appropriate to direct the competent authority of the Government of Kerala to come out with a notification or an instruction clarifying as to whether

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Government Pleaders, Senior Government Pleaders and Special Government Pleaders are Gazetted Officers or not without undue delay and at any rate within a period of one month from the date of receipt of a certified copy of this judgment.

Writ petition disposed of as above.

Sd/-
GOPINATH P.
JUDGE

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APPENDIX OF WP(C) 41623/2024

PETITIONER'S EXHIBITS

Exhibit P1	**TRUE COPY OF THE NOTICE OF INTENDED MARRIAGE SUBMITTED TO THE 2ND RESPONDENT**
Exhibit P2	**TRUE COPY OF THE LETTER ISSUED BY THE SECOND RESPONDENT TO [redacted] DATED 16.11.2024.**
Exhibit P3	**TRUE COPY OF THE LETTER DATED 21.11.2024 ISSUED BY THE SECOND RESPONDENT TO THE PETITIONER.**